

HOUSE BILL NO. 581

INTRODUCED BY GUTSCHE, HARRIS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AIR QUALITY LAWS; MODIFYING PUBLIC COMMENT PERIODS FOR CERTAIN AIR QUALITY PERMITS; CLARIFYING THE FILING DEADLINE FOR CERTAIN AFFIDAVITS; PROVIDING THE BOARD OF ENVIRONMENTAL REVIEW WITH RULEMAKING AUTHORITY TO AUTHORIZE AND EXTEND PUBLIC COMMENT PERIODS; AMENDING SECTION 75-2-211, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-2-211, MCA, is amended to read:

"75-2-211. (Temporary) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department except as provided in subsection (12).

(3) The permit program administered by the department pursuant to this section must include the following:

- (a) requirements and procedures for permit applications, including standard application forms;
- (b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;
- (c) procedures for public notice and opportunity for comment or public hearing, as appropriate;
- (d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;
- (e) requirements for inspection, monitoring, recordkeeping, and reporting;
- (f) procedures for the transfer of permits;

1 (g) requirements and procedures for suspension, modification, and revocation of permits by the
2 department;

3 (h) requirements and procedures for appropriate emission limitations and other requirements, including
4 enforceable measures necessary to ensure compliance with those limitations and requirements;

5 (i) requirements and procedures for permit modification and amendment; and

6 (j) requirements and procedures for issuing a single permit authorizing emissions from similar
7 operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance
8 with the requirements of this chapter at all authorized locations and a requirement that the owner or operator
9 notify the department in advance of each change in location.

10 (4) This section does not restrict the board's authority to adopt regulations providing for a single air
11 quality permit system.

12 (5) Department approval of an application to transfer a portable emission source from one location to
13 another is exempt from the provisions of 75-1-201(1).

14 (6) The department may, for good cause shown, waive or shorten the time required for filing the
15 appropriate applications.

16 (7) The department shall require that applications for permits be accompanied by any plans,
17 specifications, and other information that it considers necessary.

18 (8) An application is not considered filed until the applicant has submitted all fees required under
19 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7)
20 of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of
21 an application that the application is incomplete and fails to list the reasons why the application is considered
22 incomplete, the application is considered filed as of the date of the purported filing.

23 (9) (a) Except as provided in 75-1-208(4)(b), if an application for a permit requires the preparation of
24 an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1
25 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

26 (i) 180 days after the department's receipt of a filed application, as provided in subsection (8), if the
27 department prepares the environmental impact statement;

28 (ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state
29 agency other than the department has been designated by the governor as lead agency for preparation of the
30 environmental impact statement; or

1 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a
2 permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement
3 in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

4 (b) If an application does not require the preparation of an environmental impact statement, is not
5 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42
6 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt
7 of a filed application, as provided in subsection (8), of its approval or denial of the application.

8 (c) If an application does not require the preparation of an environmental impact statement and is
9 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the
10 applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its
11 approval or denial of the application.

12 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an
13 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the
14 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed
15 application, as provided in subsection (8).

16 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that
17 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department
18 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required
19 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications
20 within the time period provided for in 75-2-215(3)(e).

21 (f) The time for notification may be extended for 30 days by written agreement of the department and
22 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.
23 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's
24 agent.

25 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the
26 application. This does not limit or abridge the right of any person to seek available judicial remedies to require
27 the department to act in a timely manner.

28 (10) When the department approves or denies the application for a permit under this section, a person
29 who is jointly or severally adversely affected by the department's decision may request a hearing before the
30 board. The request for hearing must be filed within 15 days after the department renders its decision and must

1 include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana
2 Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this
3 subsection.

4 (11) (a) The department's decision on the application is not final until 15 days have elapsed from the
5 date of the decision.

6 (b) The filing of a request for hearing does not stay the department's decision. However, the board may
7 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

8 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

9 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
10 requesting the stay.

11 (c) Upon granting a stay, the board may require a written undertaking to be given by the party
12 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees
13 if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use
14 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

15 (12) (a) Except as provided in subsections (12)(b) and (12)(c), an applicant who has received a written
16 notice that its application is considered filed pursuant to subsection (8) may:

17 (i) for a temporary power generation unit or units with a total electrical generation capacity of not more
18 than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the
19 department's issuance of a permit under this section.

20 (ii) for a temporary power generation unit or units with a total electrical generating capacity of 10
21 megawatts or less, construct and operate the unit or units.

22 (b) The construction or operation of a temporary power generation unit or units described in subsection
23 (12)(a) is not in violation of this part unless the operation of the temporary power generation unit or units
24 continues after a department decision to deny the permit application becomes final as provided in this section.

25 (c) (i) A permit applicant shall discontinue construction or operation of a temporary power generation
26 unit or units if the applicant is notified by the department in writing that the applicant has failed to submit by the
27 department's deadline any additional information that is necessary to process the permit application.

28 (ii) The operation of a permit applicant's temporary power generation unit or units described in
29 subsection (12)(a) may not violate ambient air quality standards.

30 (d) A permit issued under this part and pursuant to the provisions of this subsection (12) must expire

no later than 2 years from the date that the department received the permit application and must require removal of the temporary power generation unit or units upon expiration of the permit unless an air quality permit for permanent operation has been issued.

(13) The board shall provide, by rule, a period of 30 days in which the public may submit comments on draft air quality permits for applications that:

(a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;

(b) are subject to the requirements of 75-2-215; or

(c) require the preparation of an environmental impact statement.

(14) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection (14)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department. (Terminates July 1, 2005--sec. 4, Ch. 588, L. 2001.)

75-2-211. (Effective July 1, 2005) Permits for construction, installation, alteration, or use. (1) The board shall by rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Except as provided in 75-1-208(4)(b) and 75-2-234, not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal

1 agencies, as appropriate;

2 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

3 (f) procedures for the transfer of permits;

4 (g) requirements and procedures for suspension, modification, and revocation of permits by the
5 department;

6 (h) requirements and procedures for appropriate emission limitations and other requirements, including
7 enforceable measures necessary to ensure compliance with those limitations and requirements;

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9 (j) requirements and procedures for issuing a single permit authorizing emissions from similar
10 operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance
11 with the requirements of this chapter at all authorized locations and a requirement that the owner or operator
12 notify the department in advance of each change in location.

13 (4) This section does not restrict the board's authority to adopt regulations providing for a single air
14 quality permit system.

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9 U.S.C. 7475, 7503, or 7661, the department shall notify the applicant in writing within 60 days after its receipt
10 of a filed application, as provided in subsection (8), of its approval or denial of the application, except as provided
11 in subsection (13).

12 (c) If an application does not require the preparation of an environmental impact statement and is
13 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661, the department shall notify the
14 applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its
15 approval or denial of the application.

16 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an
17 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the
18 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed
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20 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that
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22 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required
23 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications
24 within the time period provided for in 75-2-215(3)(e).

25 (f) The time for notification may be extended for 30 days by written agreement of the department and
26 the applicant. Additional 30-day extensions may be granted by the department upon the request of the applicant.
27 Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's
28 agent.

29 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the
30 application. This does not limit or abridge the right of any person to seek available judicial remedies to require

1 the department to act in a timely manner.

2 (10) When the department approves or denies the application for a permit under this section, a person
3 who is jointly or severally adversely affected by the department's decision may request a hearing before the
4 board. The request for hearing must be filed within 15 days after the department renders its decision, ~~and must~~
5 ~~include an~~ An affidavit setting forth the grounds for the request must be filed within 30 days after the department
6 renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter
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9 date of the decision.

10 (b) The filing of a request for hearing does not stay the department's decision. However, the board may
11 order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

- 12 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or
13 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person
14 requesting the stay.

15 (c) Upon granting a stay, the board may require a written undertaking to be given by the party
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17 if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use
18 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on injunctions.

19 (12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on
20 draft air quality permits for applications that:

- 21 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661;
22 (b) are subject to the requirements of 75-2-215; or
23 (c) require the preparation of an environmental impact statement.

24 (13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on
25 draft air quality permits not subject to subsection (12).

26 (14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

- 27 (a) the period as provided in subsection (13) in which the public may submit comments on draft air
28 quality permits not subject to subsection (12); and
29 (b) the period for notifying an applicant of its final decision on approval or denial of an application, as
30 provided in subsection (9)(b).

~~(13)~~(15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or creation of:

(i) general permits covering multiple similar sources; or

(ii) other permits covering multiple similar sources.

(b) Rules adopted pursuant to subsection ~~(13)(a)~~ (15)(a) may provide for construction and operation under the permit upon authorization by the department or upon notice to the department."

NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 2005.

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